

GARY HANSBROUGH

IBLA 80-673

Decided September 30, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, declining to record mining claim recordation certificates. MC 3833 (OR).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

For mining claims located after Oct. 21, 1976, copies of notices or certificates of location must be recorded with BLM within 90 days after the date of location. 43 CFR 3833.1-2(d) states that a location notice shall be accompanied by a service fee. As this is a mandatory requirement there is no recordation unless the notice is accompanied by the stated fee, or until it is paid. Where, for claims located after Oct. 21, 1976, the filing fee is not paid within 90 days after the date of location, the claims must be deemed abandoned and void.

APPEARANCES: Gary Hansbrough, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a letter decision dated April 24, 1980, rendered by the Oregon State Office, Bureau of Land Management (BLM), declining to record appellant's certificates of location for the

Bleugene Nos. I and II ^{1/} and the Jordan mining claims because they were not accompanied by the service fee as required by 43 CFR 3833.1-2(d). That regulation states: "Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner."

The Bleugene Nos. I and II and the Jordan mining claims were located on January 22, 1980. The appellant's location certificates bear the stamp of the Oregon State Office, BLM, and are dated April 18, 1980. The certificates of location were not accompanied by the mandatory filing fees. Further, there is no evidence that payment of the service fees has ever been tendered to BLM in connection with this attempted recordation.

Appellant, in his notice of appeal, states that he filed the subject claims with BLM within 90 days after their location. He asserts that because the claims reached BLM before the 90 days had expired, they should be acceptable notwithstanding his failure to include the \$5 filing fee. Appellant does not, however, dispute that the filing fees did not accompany the claims which he sent to BLM.

[1] Both sentences of 43 CFR 3833.1-2(d), supra, refer to the requirement that the service fee must accompany the claim or site filed and the second sentence mandates rejection and return to its owner of a filing not accompanied by the fee. In a recent decision, Joe B. Cashman, 43 IBLA 239 (1979), we construed that regulation in a manner which controls the disposition of this case. We stated at 43 IBLA 240:

43 CFR 3833.1-2 requires that, for mining claims, millsites, or tunnel sites located prior to October 21, 1976, a copy of the location notice must be recorded with the proper office of BLM within 3 years, or before October 22, 1979. For such claims or sites located after October 21, 1976, the location notice must be recorded in the proper BLM office within 90 days following date of location. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. [Emphasis in original.]

Appellant's filing fees were due within 90 days after the location of his claims. Since the fees were not paid within 90 days after the location of the claims, appellant's filings were not timely and

^{1/} The BLM decision apparently misspelled the names of two of appellant's claims as Bieugene I and Bieugene II. The notices of location indicate the spelling to be Bleugene I and Bleugene II.

his claims must be deemed abandoned and void under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

